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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/294,181	04/19/99	HOFFMAN W	E-1654CIP

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EXAMINER	
FULTON,C	
ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 04/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/294,181	HOFFMAN, WILLIAM W.	
	Examiner	Art Unit	
	Christopher W. Fulton	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-30 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second sets of indicia being on opposite surfaces of the blade cited in claim 29 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 22, and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ballou or McCully.

4. Claims 1, 3, 22, and 25 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Canfield.

5. Claim 17 is rejected under 35 U.S.C. 102(a) as being clearly anticipated by Drechsler.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2, 6-8, 14-16, 26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canfield in view of Drechsler.

The device as claimed is disclosed by Canfield as stated in the rejection recited above for claims 1, 3, 22, and 25, but lacks a second set of indicia upside down from the first so the tape can be used from either side of the device. Drechsler teaches using a second set of indicia upside down from the first so the device can be used from either side. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second set of indicia to Canfield that is upside down from the first as taught by Drechsler so the indicia can be view as right side up from either side of the device.

8. Claims 9, 10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canfield in view of Pinney, Jr. et al.

The device as claimed is disclosed by Canfield as stated in the rejection recited above for claims 1, 3, 22, and 25, but lacks the tab being comprised of a base removably insertable into a slot of an extension with the extension extending in two direction transverse to the blade so the extension can be removed from the blade. Pinney, Jr. et al teaches using a tab comprised of a

base 12 and a removable extension 15 with a slot 18 so the extension can be easily removed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tab of Canfield of two sections as taught by Pinney, Jr. et al so the extension having a slot can be easily removed from the base section.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drechsler in view of Pinney, Jr. et al.

The device as claimed is disclosed by Drechsler as stated in the rejection recited above for claim 17, however, since the intent of the claim appears to be that the tab is readily removable for the free end of the blade by for example a slot type connection then Drechsler would lack the tab being comprised of a base removably insertable into a slot of an extension so the extension can be easily removed from the blade. Pinney, Jr. et al teaches using a tab comprised of a base 12 and a removable extension 15 with a slot 18 so the extension can be easily removed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tab of Drechsler of two sections as taught by Pinney, Jr. et al so the extension having a slot can be easily removed from the base section.

10. Claims 14-16, 18, 19, 26, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drechsler in view of Pinney, Jr. et al as applied to claim 17 above, and further in view of Ballou.

The device as claimed is disclosed by the combination of Drechsler and Pinney, Jr. et al as stated in the rejection recited above for claim 17, but lacks the tab extending in two directions

transverse to the blade. Ballou teaches using a tab that extends in two directions 5,6 that are transverse to the blade so the tab can be hooked to an object with the blade above or below the object. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tab of Drechsler extend in two directions that are transverse to the blade as taught by Ballou so the device can be attached to an object with the blade on above or below the object.

Double Patenting

11. Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 5,894,677. Although the conflicting claims are not identical, they are not patentably distinct from each other because The broader claims of the application are encompassed by the claims of the patent.

12. Claims 29 and 30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 5,894,677 in view of Drechsler. The device as claimed is substantially disclosed and claimed by U.S. Patent No. 5,894,677, but lack the indicia being on opposite surfaces of the blade so the indicia can be read from the top or the bottom of the device. Drechsler teaches using indicia on the top and bottom surfaces of a blade so the indicia can be read from the top or the bottom of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention

was made to add indicia to the bottom of the blade of U.S. Patent No. 5,894,677 as taught by Drechsler so the indicia can be read from the bottom of the device as well as the top.

Response to Arguments

13. Applicant's arguments filed March 5, 2001 have been fully considered but they are not persuasive.

Argument 1: moot

Argument 2: The objection to the drawings is maintained because even though support for the claimed subject matter is found at page 17 lines 1-4 claimed subject matter needs to be shown in the figures.

Argument 3: moot

Argument 4: Both Ballou and McCully disclose tabs the extend in a plane perpendicular to the blade in two directions transverse to the lengthwise edge of the blade (see items 5 and 6 in Ballou and items 18 and 38 of figures 3 and 4 of McCully).

Argument 5: The Canfield reference discloses a tab that extends in a plane perpendicular to the blade in two directions transverse to the lengthwise edge of the blade (see item 14 or 94). In addition the claims do not restrict the use of the aligning knob 92 since the claims are in the open ended comprising format.

Argument 6: The arguments to the added limitations to the tab are moot in view of the new ground of rejection involving those claims. With regard to claim 17 the tab 28 is considered

removable in the 102 (b) rejection since it is attached by rivets and therefore removable. However, to advance prosecution an additional rejection has been added with the teaching reference of Pinney, Jr to teach a readily removable tab section mounted with a slot.

Argument 7: see point 5.

Argument 8: The Pinney, Jr et al reference is not being used to teach the orientation of the tab webs, but for the quick removal aspect using a slot to readily add extending webs to existing standard tapes that only have webs extending downwardly, therefore, to use a slot to quickly and removably mount the up and down extensions of Canfield to a standard tape using the slot system of Pinney, Jr. et al would have been obvious to one of ordinary skill in the art at the time the invention was made.

Argument 9: The Ballou reference was not intended to be used to teach the piercing aspect of the tape hook, but the up and down extensions taught by Ballou to hook on the top of bottom of an object being measured.

Argument 10: see above.

Arguments 11 and 12: The rejections are still deemed appropriate.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Christopher W. Fulton whose telephone number is (703) 308-3389. The examiner can normally be reached on Monday - Thursday from 6:30 to 4:00 Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. F. Gutierrez, can be reached on (703) 308-3875. The fax phone number for this Group is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

CWF
April 19, 2001

Christopher W. Fulton
Primary Examiner
Art Unit 2859